

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1044

Introduced by Assembly Member Jones

February 27, 2009

An act to amend Sections 1770, 1771, 1771.7, 1776.3, 1777.2, and 1788 of, to add Section 1770.5 to, and to repeal and add Section 1778 of, the Health and Safety Code, relating to continuing care retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1044, as amended, Jones. Continuing care retirement communities: contracts.

(1) Under existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year.

This bill would transfer that responsibility, except with respect to oversight and regulation of programs and services provided directly to residents of the communities, to the Department of Insurance and would make related conforming changes.

The bill would require, by not later than January 1, 2011, the Insurance Commissioner, State Public Health Officer, and the Director of Social Services to jointly develop and adopt regulations regarding standards, staff training, policies, and procedures to ensure maximum

coordination and consistency of implementation of the transfer required by the bill.

(2) Existing law establishes the Continuing Care Provider Fee Fund, which is continuously appropriated to the State Department of Social Services for purposes of administering the continuing care retirement community requirements of existing law.

This bill would, for purposes of administering the above provisions, create 2 accounts within the fund, the Insurance Account, which would be continuously appropriated to the Department of Insurance, and the State Department of Social Services Account, which would be continuously appropriated to the State Department of Social Services. Ninety-five percent of fees collected pursuant to the above-described provisions would be deposited into the Insurance Account and 5% into the State Department of Social Services Account.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) California is home to nearly four million people over 65
- 4 years of age; the largest older adult population in the nation. This
- 5 number is expected to more than double over the next several
- 6 decades as the baby boomers begin reaching this milestone.
- 7 (b) Continuing care retirement communities are an alternative
- 8 for the long-term residential, social, and health care needs of
- 9 California's elderly residents and seek to provide a continuum of
- 10 care, minimize transfer trauma, and allow services to be provided
- 11 in an appropriately licensed setting.
- 12 (c) Because elderly residents often both expend a significant
- 13 portion of their savings in order to purchase care in a continuing
- 14 care retirement community and expect to receive care at their
- 15 continuing care retirement community for the rest of their lives,
- 16 tragic consequences can result if a continuing care provider
- 17 becomes insolvent or unable to provide responsible care.
- 18 (d) The Legislature has recognized the importance of continuing
- 19 care provider solvency and the need for disclosure concerning the
- 20 terms of agreements made between prospective residents and the

1 continuing care provider, and concerning the operations of the
2 continuing care retirement community.

3 (e) The Legislature defines continuing care contracts in terms
4 of a promise of the future provision of services which are analogous
5 to insurance products.

6 (f) Continuing care retirement communities have long-term
7 obligations and may have a corporate or capital structure similar
8 to insurance holding company systems, as defined in the Insurance
9 Code.

10 (g) Therefore, it is the intent of the Legislature to transfer general
11 regulatory responsibility for continuing care retirement
12 communities, except for oversight and regulation of programs and
13 services provided directly to residents of the communities, from
14 the Department of Social Services to the Department of Insurance.

15 SEC. 2. Section 1770 of the Health and Safety Code is amended
16 to read:

17 1770. The Legislature finds, declares, and intends all of the
18 following:

19 (a) Continuing care retirement communities are an alternative
20 for the long-term residential, social, and health care needs of
21 California's elderly residents and seek to provide a continuum of
22 care, minimize transfer trauma, and allow services to be provided
23 in an appropriately licensed setting.

24 (b) Because elderly residents often both expend a significant
25 portion of their savings in order to purchase care in a continuing
26 care retirement community and expect to receive care at their
27 continuing care retirement community for the rest of their lives,
28 tragic consequences can result if a continuing care provider
29 becomes insolvent or unable to provide responsible care.

30 (c) There is a need for disclosure concerning the terms of
31 agreements made between prospective residents and the continuing
32 care provider, and concerning the operations of the continuing care
33 retirement community.

34 (d) Providers of continuing care should be required to obtain a
35 certificate of authority to enter into continuing care contracts and
36 should be monitored and regulated by the Department of Insurance.

37 (e) This chapter applies equally to for-profit and nonprofit
38 provider entities.

39 (f) This chapter states the minimum requirements to be imposed
40 upon any entity offering or providing continuing care.

(g) Because the authority to enter into continuing care contracts granted by the Department of Insurance is neither a guarantee of performance by the providers nor an endorsement of any continuing care contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.

SEC. 3. Section 1770.5 is added to the Health and Safety Code, to read:

1770.5. (a) The Department of Insurance shall succeed to and be vested with all the duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Social Services described in this chapter, except for oversight and regulation of programs and services provided directly to residents of the communities. The Department of Insurance shall create a Continuing Care Contracts Branch which shall succeed to and be vested with the duties, powers, functions, responsibilities, and jurisdiction of the former Continuing Care Contracts Branch in the State Department of Social Services.

(b) All regulations, orders, and guidelines adopted pursuant to this chapter by the State Department of Social Services, including the former Continuing Care Contracts Branch in the State Department of Social Services, and any of its predecessors in effect immediately preceding the operative date of this section shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed, or until they expire by their own terms.

(c) Any action by or against the State Department of Social Services pertaining to matters vested in the State Department of Social Services by this chapter shall not abate but shall continue in the name of the Department of Insurance, and the Department of Insurance shall be substituted for the State Department of Social Services and any of its predecessors by the court wherein the action is pending. The substitution shall not in any way affect the rights of the parties to the action. This substitution shall not be construed to affect the continuing responsibility of the State Department of Social Services to provide oversight and regulation of programs and services provided directly to residents of the communities.

(d) All books, documents, records, and property of the State Department of Social Services pertaining to functions transferred

1 to the Department of Insurance pursuant to this section shall be
2 transferred to the Department of Insurance.

3 (e) All unexpended balances of appropriations and other funds
4 available for use in connection with any function or the
5 administration of any law transferred to the Department of
6 Insurance pursuant to this section shall be transferred to the
7 Department of Insurance for use for the purpose for which the
8 appropriation was originally made or the funds were originally
9 available. If there is any doubt as to where those balances and
10 funds are transferred, the Department of Finance shall determine
11 where the balances and funds are transferred.

12 (f) No contract, lease, license, or any other agreement to which
13 the State Department of Social Services is a party pursuant to this
14 chapter shall be void or voidable by reason of this section, but
15 shall continue in full force and effect, with the Department of
16 Insurance assuming all of the rights, obligations, and duties of the
17 State Department of Social Services under this chapter. That
18 assumption by the Department of Insurance shall not in any way
19 affect the rights of the parties to the contract, lease, license, or
20 agreement.

21 (g) Every officer and employee of the State Department of Social
22 Services who is performing a function transferred to the
23 Department of Insurance pursuant to this section and who is serving
24 in the state civil service, other than as a temporary employee, shall
25 be transferred to the Department of Insurance pursuant to the
26 provisions of Section 19050.9 of the Government Code. The status,
27 position, and rights of these officers and employees shall not be
28 affected by the transfer and shall be retained by the person as an
29 officer or employee of the Department of Insurance, as the case
30 may be, pursuant to the State Civil Service Act (Part 2
31 (commencing with Section 18500) of Division 5 of Title 2 of the
32 Government Code), except as to a position that is exempt from
33 civil service.

34 (h) The commissioner shall review the requirements of this
35 chapter and make recommendations to the Legislature as he or she
36 deems necessary to improve the oversight and regulation of the
37 financial management of continuing care retirement communities
38 to protect consumers who enter into continuing care contracts.

39 (i) *No later than January 1, 2011, the Insurance Commissioner,*
40 *the State Public Health Officer, and the Director of Social Services*

1 *shall jointly develop and adopt regulations regarding standards,*
2 *staff training, policies, and procedures to ensure maximum*
3 *coordination and consistency of implementation of the transfers*
4 *required by this section.*

5 SEC. 4. Section 1771 of the Health and Safety Code is amended
6 to read:

7 1771. Unless the context otherwise requires, the definitions in
8 this section govern the interpretation of this chapter.

9 (a) (1) “Affiliate” means any person, corporation, limited
10 liability company, business trust, trust, partnership, unincorporated
11 association, or other legal entity that directly or indirectly controls,
12 is controlled by, or is under common control with, a provider or
13 applicant.

14 (2) “Affinity group” means a grouping of entities sharing a
15 common interest, philosophy, or connection (e.g., military officers,
16 religion).

17 (3) “Annual report” means the report each provider is required
18 to file annually with the department, as described in Section 1790.

19 (4) “Applicant” means any entity, or combination of entities,
20 that submits and has pending an application to the department for
21 a permit to accept deposits and a certificate of authority.

22 (5) “Assisted living services” includes, but is not limited to,
23 assistance with personal activities of daily living, including
24 dressing, feeding, toileting, bathing, grooming, mobility, and
25 associated tasks, to help provide for and maintain physical and
26 psychosocial comfort.

27 (6) “Assisted living unit” means the living area or unit within
28 a continuing care retirement community that is specifically
29 designed to provide ongoing assisted living services.

30 (7) “Audited financial statement” means financial statements
31 prepared in accordance with generally accepted accounting
32 principles including the opinion of an independent certified public
33 accountant, and notes to the financial statements considered
34 customary or necessary to provide full disclosure and complete
35 information regarding the provider’s financial statements, financial
36 condition, and operation.

37 (b) (reserved)

38 (c) (1) “Cancel” means to destroy the force and effect of an
39 agreement or continuing care contract.

1 (2) "Cancellation period" means the 90-day period, beginning
2 when the resident physically moves into the continuing care
3 retirement community, during which the resident may cancel the
4 continuing care contract, as provided in Section 1788.2.

5 (3) "Care" means nursing, medical, or other health related
6 services, protection or supervision, assistance with the personal
7 activities of daily living, or any combination of those services.

8 (4) "Cash equivalent" means certificates of deposit and United
9 States treasury securities with a maturity of five years or less.

10 (5) "Certificate" or "certificate of authority" means the
11 certificate issued by the department, properly executed and bearing
12 the State Seal, authorizing a specified provider to enter into one
13 or more continuing care contracts at a single specified continuing
14 care retirement community.

15 (6) "Commissioner" means the Insurance Commissioner.

16 (7) "Condition" means a restriction, specific action, or other
17 requirement imposed by the department for the initial or continuing
18 validity of a permit to accept deposits, a provisional certificate of
19 authority, or a certificate of authority. A condition may limit the
20 circumstances under which the provider may enter into any new
21 deposit agreement or contract, or may be imposed as a condition
22 precedent to the issuance of a permit to accept deposits, a
23 provisional certificate of authority, or a certificate of authority.

24 (8) "Consideration" means some right, interest, profit, or benefit
25 paid, transferred, promised, or provided by one party to another
26 as an inducement to contract. Consideration includes some
27 forbearance, detriment, loss, or responsibility, that is given,
28 suffered, or undertaken by a party as an inducement to another
29 party to contract.

30 (9) "Continuing care contract" means a contract that includes
31 a continuing care promise made, in exchange for an entrance fee,
32 the payment of periodic charges, or both types of payments. A
33 continuing care contract may consist of one agreement or a series
34 of agreements and other writings incorporated by reference.

35 (10) "Continuing care advisory committee" means an advisory
36 panel appointed pursuant to Section 1777.

37 (11) "Continuing care promise" means a promise, expressed or
38 implied, by a provider to provide one or more elements of care to
39 an elderly resident for the duration of his or her life or for a term
40 in excess of one year. Any such promise or representation, whether

1 part of a continuing care contract, other agreement, or series of
2 agreements, or contained in any advertisement, brochure, or other
3 material, either written or oral, is a continuing care promise.

4 (12) “Continuing care retirement community” means a facility
5 located within the State of California where services promised in
6 a continuing care contract are provided. A distinct phase of
7 development approved by the department may be considered to
8 be the continuing care retirement community when a project is
9 being developed in successive distinct phases over a period of
10 time. When the services are provided in residents’ own homes, the
11 homes into which the provider takes those services are considered
12 part of the continuing care retirement community.

13 (13) “Control” means directing or causing the direction of the
14 financial management or the policies of another entity, including
15 an operator of a continuing care retirement community, whether
16 by means of the controlling entity’s ownership interest, contract,
17 or any other involvement. A parent entity or sole member of an
18 entity controls a subsidiary entity provider for a continuing care
19 retirement community if its officers, directors, or agents directly
20 participate in the management of the subsidiary entity or in the
21 initiation or approval of policies that affect the continuing care
22 retirement community’s operations, including, but not limited to,
23 approving budgets or the administrator for a continuing care
24 retirement community.

25 (d) (1) “Department” means the Department of Insurance,
26 except with respect to the oversight and regulation of programs
27 and services provided directly to residents of the communities, in
28 which case “department” means State Department of Social
29 Services.

30 (2) “Deposit” means any transfer of consideration, including a
31 promise to transfer money or property, made by a depositor to any
32 entity that promises or proposes to promise to provide continuing
33 care, but is not authorized to enter into a continuing care contract
34 with the potential depositor.

35 (3) “Deposit agreement” means any agreement made between
36 any entity accepting a deposit and a depositor. Deposit agreements
37 for deposits received by an applicant prior to the department’s
38 release of funds from the deposit escrow account shall be subject
39 to the requirements described in Section 1780.4.

1 (4) “Depository” means a bank or institution that is a member
2 of the Federal Deposit Insurance Corporation or a comparable
3 deposit insurance program.

4 (5) “Depositor” means any prospective resident who pays a
5 deposit. Where any portion of the consideration transferred to an
6 applicant as a deposit or to a provider as consideration for a
7 continuing care contract is transferred by a person other than the
8 prospective resident or a resident, that third-party transferor shall
9 have the same cancellation or refund rights as the prospective
10 resident or resident for whose benefit the consideration was
11 transferred.

12 (e) (1) “Elderly” means an individual who is 60 years of age
13 or older.

14 (2) “Entity” means an individual, partnership, corporation,
15 limited liability company, and any other form for doing business.
16 Entity includes a person, sole proprietorship, estate, trust,
17 association, and joint venture.

18 (3) “Entrance fee” means the sum of any initial, amortized, or
19 deferred transfer of consideration made or promised to be made
20 by, or on behalf of, a person entering into a continuing care contract
21 for the purpose of assuring care or related services pursuant to that
22 continuing care contract or as full or partial payment for the
23 promise to provide care for the term of the continuing care contract.
24 Entrance fee includes the purchase price of a condominium,
25 cooperative, or other interest sold in connection with a promise of
26 continuing care. An initial, amortized, or deferred transfer of
27 consideration that is greater in value than 12 times the monthly
28 care fee shall be presumed to be an entrance fee.

29 (4) “Equity” means the value of real property in excess of the
30 aggregate amount of all liabilities secured by the property.

31 (5) “Equity interest” means an interest held by a resident in a
32 continuing care retirement community that consists of either an
33 ownership interest in any part of the continuing care retirement
34 community property or a transferable membership that entitles the
35 holder to reside at the continuing care retirement community.

36 (6) “Equity project” means a continuing care retirement
37 community where residents receive an equity interest in the
38 continuing care retirement community property.

39 (7) “Equity securities” shall refer generally to large and
40 midcapitalization corporate stocks that are publicly traded and

1 readily liquidated for cash, and shall include shares in mutual funds
2 that hold portfolios consisting predominantly of these stocks and
3 other qualifying assets, as defined by Section 1792.2. Equity
4 securities shall also include other similar securities that are
5 specifically approved by the department.

6 (8) “Escrow agent” means a bank or institution, including, but
7 not limited to, a title insurance company, approved by the
8 department to hold and render accountings for deposits of cash or
9 cash equivalents.

10 (f) “Facility” means any place or accommodation where a
11 provider provides or will provide a resident with care or related
12 services, whether or not the place or accommodation is constructed,
13 owned, leased, rented, or otherwise contracted for by the provider.

14 (g) (reserved)

15 (h) (reserved)

16 (i) (1) “Inactive certificate of authority” means a certificate that
17 has been terminated under Section 1793.8.

18 (2) “Investment securities” means any of the following:

19 (A) Direct obligations of the United States, including obligations
20 issued or held in book-entry form on the books of the United States
21 Department of the Treasury or obligations the timely payment of
22 the principal of, and the interest on, which are fully guaranteed by
23 the United States.

24 (B) Obligations, debentures, notes, or other evidences of
25 indebtedness issued or guaranteed by any of the following:

26 (i) The Federal Home Loan Bank System.

27 (ii) The Export-Import Bank of the United States.

28 (iii) The Federal Financing Bank.

29 (iv) The Government National Mortgage Association.

30 (v) The Farmer’s Home Administration.

31 (vi) The Federal Home Loan Mortgage Corporation of the
32 Federal Housing Administration.

33 (vii) Any agency, department, or other instrumentality of the
34 United States if the obligations are rated in one of the two highest
35 rating categories of each rating agency rating those obligations.

36 (C) Bonds of the State of California or of any county, city and
37 county, or city in this state, if rated in one of the two highest rating
38 categories of each rating agency rating those bonds.

1 (D) Commercial paper of finance companies and banking
2 institutions rated in one of the two highest categories of each rating
3 agency rating those instruments.

4 (E) Repurchase agreements fully secured by collateral security
5 described in subparagraph (A) or (B), as evidenced by an opinion
6 of counsel, if the collateral is held by the provider or a third party
7 during the term of the repurchase agreement, pursuant to the terms
8 of the agreement, subject to liens or claims of third parties, and
9 has a market value, which is determined at least every 14 days, at
10 least equal to the amount so invested.

11 (F) Long-term investment agreements, which have maturity
12 dates in excess of one year, with financial institutions, including,
13 but not limited to, banks and insurance companies or their affiliates,
14 if the financial institution's paying ability for debt obligations or
15 long-term claims or the paying ability of a related guarantor of the
16 financial institution for these obligations or claims, is rated in one
17 of the two highest rating categories of each rating agency rating
18 those instruments, or if the short-term investment agreements are
19 with the financial institution or the related guarantor of the financial
20 institution, the long-term or short-term debt obligations, whichever
21 is applicable, of which are rated in one of the two highest long-term
22 or short-term rating categories, of each rating agency rating the
23 bonds of the financial institution or the related guarantor, provided
24 that if the rating falls below the two highest rating categories, the
25 investment agreement shall allow the provider the option to replace
26 the financial institution or the related guarantor of the financial
27 institution or shall provide for the investment securities to be fully
28 collateralized by investments described in subparagraph (A), and,
29 provided further, if so collateralized, that the provider has a
30 perfected first security lien on the collateral, as evidenced by an
31 opinion of counsel and the collateral is held by the provider.

32 (G) Banker's acceptances or certificates of deposit of, or time
33 deposits in, any savings and loan association that meets any of the
34 following criteria:

35 (i) The debt obligations of the savings and loan association, or
36 in the case of a principal bank, of the bank holding company, are
37 rated in one of the two highest rating categories of each rating
38 agency rating those instruments.

39 (ii) The certificates of deposit or time deposits are fully insured
40 by the Federal Deposit Insurance Corporation.

1 (iii) The certificates of deposit or time deposits are secured at
2 all times, in the manner and to the extent provided by law, by
3 collateral security described in subparagraph (A) or (B) with a
4 market value, valued at least quarterly, of no less than the original
5 amount of moneys so invested.

6 (H) Taxable money market government portfolios restricted to
7 obligations issued or guaranteed as to payment of principal and
8 interest by the full faith and credit of the United States.

9 (I) Obligations the interest on which is excluded from gross
10 income for federal income tax purposes and money market mutual
11 funds whose portfolios are restricted to these obligations, if the
12 obligations or mutual funds are rated in one of the two highest
13 rating categories by each rating agency rating those obligations.

14 (J) Bonds that are not issued by the United States or any federal
15 agency, but that are listed on a national exchange and that are rated
16 at least “A” by Moody’s Investors Service, or the equivalent rating
17 by Standard and Poor’s Corporation or Fitch Investors Service.

18 (K) Bonds not listed on a national exchange that are traded on
19 an over-the-counter basis, and that are rated at least “Aa” by
20 Moody’s Investors Service or “AA” by Standard and Poor’s
21 Corporation or Fitch Investors Service.

22 (j) (reserved)

23 (k) (reserved)

24 (l) “Life care contract” means a continuing care contract that
25 includes a promise, expressed or implied, by a provider to provide
26 or pay for routine services at all levels of care, including acute
27 care and the services of physicians and surgeons, to the extent not
28 covered by other public or private insurance benefits, to a resident
29 for the duration of his or her life. Care shall be provided under a
30 life care contract in a continuing care retirement community having
31 a comprehensive continuum of care, including a skilled nursing
32 facility, under the ownership and supervision of the provider on
33 or adjacent to the premises. No change may be made in the monthly
34 fee based on level of care. A life care contract shall also include
35 provisions to subsidize residents who become financially unable
36 to pay their monthly care fees.

37 (m) (1) “Monthly care fee” means the fee charged to a resident
38 in a continuing care contract on a monthly or other periodic basis
39 for current accommodations and services including care, board,

1 or lodging. Periodic entrance fee payments or other prepayments
2 shall not be monthly care fees.

3 (2) “Monthly fee contract” means a continuing care contract
4 that requires residents to pay monthly care fees.

5 (n) “Nonambulatory person” means a person who is unable to
6 leave a building unassisted under emergency conditions in the
7 manner described by Section 13131.

8 (o) (reserved)

9 (p) (1) “Per capita cost” means a continuing care retirement
10 community’s operating expenses, excluding depreciation, divided
11 by the average number of residents.

12 (2) “Periodic charges” means fees paid by a resident on a
13 periodic basis.

14 (3) “Permit to accept deposits” means a written authorization
15 by the department permitting an applicant to enter into deposit
16 agreements regarding a single specified continuing care retirement
17 community.

18 (4) “Prepaid contract” means a continuing care contract in which
19 the monthly care fee, if any, may not be adjusted to cover the actual
20 cost of care and services.

21 (5) “Preferred access” means that residents who have previously
22 occupied a residential living unit have a right over other persons
23 to any assisted living or skilled nursing beds that are available at
24 the community.

25 (6) “Processing fee” means a payment to cover administrative
26 costs of processing the application of a depositor or prospective
27 resident.

28 (7) “Promise to provide one or more elements of care” means
29 any expressed or implied representation that one or more elements
30 of care will be provided or will be available, such as by preferred
31 access.

32 (8) “Proposes” means a representation that an applicant or
33 provider will or intends to make a future promise to provide care,
34 including a promise that is subject to a condition, such as the
35 construction of a continuing care retirement community or the
36 acquisition of a certificate of authority.

37 (9) “Provider” means an entity that provides continuing care,
38 makes a continuing care promise, or proposes to promise to provide
39 continuing care. “Provider” also includes any entity that controls
40 an entity that provides continuing care, makes a continuing care

1 promise, or proposes to promise to provide continuing care. The
2 department shall determine whether an entity controls another
3 entity for purposes of this article. No homeowner's association,
4 cooperative, or condominium association may be a provider.

5 (10) "Provisional certificate of authority" means the certificate
6 issued by the department, properly executed and bearing the State
7 Seal, under Section 1786. A provisional certificate of authority
8 shall be limited to the specific continuing care retirement
9 community and number of units identified in the applicant's
10 application.

11 (q) (reserved)

12 (r) (1) "Refund reserve" means the reserve a provider is required
13 to maintain, as provided in Section 1792.6.

14 (2) "Refundable contract" means a continuing care contract that
15 includes a promise, expressed or implied, by the provider to pay
16 an entrance fee refund or to repurchase the transferor's unit,
17 membership, stock, or other interest in the continuing care
18 retirement community when the promise to refund some or all of
19 the initial entrance fee extends beyond the resident's sixth year of
20 residency. Providers that enter into refundable contracts shall be
21 subject to the refund reserve requirements of Section 1792.6. A
22 continuing care contract that includes a promise to repay all or a
23 portion of an entrance fee that is conditioned upon reoccupancy
24 or resale of the unit previously occupied by the resident shall not
25 be considered a refundable contract for purposes of the refund
26 reserve requirements of Section 1792.6, provided that this
27 conditional promise of repayment is not referred to by the applicant
28 or provider as a "refund."

29 (3) "Resale fee" means a levy by the provider against the
30 proceeds from the sale of a transferor's equity interest.

31 (4) "Reservation fee" refers to consideration collected by an
32 entity that has made a continuing care promise or is proposing to
33 make this promise and has complied with Section 1771.4.

34 (5) "Resident" means a person who enters into a continuing
35 care contract with a provider, or who is designated in a continuing
36 care contract to be a person being provided or to be provided
37 services, including care, board, or lodging.

38 (6) "Residential care facility for the elderly" means a housing
39 arrangement as defined by Section 1569.2.

1 (7) “Residential living unit” means a living unit in a continuing
2 care retirement community that is not used exclusively for assisted
3 living services or nursing services.

4 (s) (reserved)

5 (t) (1) “Termination” means the ending of a continuing care
6 contract as provided for in the terms of the continuing care contract.

7 (2) “Transfer trauma” means death, depression, or regressive
8 behavior, that is caused by the abrupt and involuntary transfer of
9 an elderly resident from one home to another and results from a
10 loss of familiar physical environment, loss of well-known
11 neighbors, attendants, nurses and medical personnel, the stress of
12 an abrupt break in the small routines of daily life, or the loss of
13 visits from friends and relatives who may be unable to reach the
14 new facility.

15 (3) “Transferor” means a person who transfers, or promises to
16 transfer, consideration in exchange for care and related services
17 under a continuing care contract or proposed continuing care
18 contract, for the benefit of another. A transferor shall have the
19 same rights to cancel and obtain a refund as the depositor under
20 the deposit agreement or the resident under a continuing care
21 contract.

22 SEC. 5. Section 1771.7 of the Health and Safety Code is
23 amended to read:

24 1771.7. (a) No resident of a continuing care retirement
25 community shall be deprived of any civil or legal right, benefit,
26 or privilege guaranteed by law, by the California Constitution, or
27 by the United States Constitution, solely by reason of status as a
28 resident of a community. In addition, because of the discretely
29 different character of residential living unit programs that are a
30 part of continuing care retirement communities, this section shall
31 augment Chapter 3.9 (commencing with Section 1599), Sections
32 72527 and 87572 of Title 22 of the California Code of Regulations,
33 and other applicable state and federal law and regulations.

34 (b) A prospective resident shall have the right to visit each of
35 the different care levels and to inspect assisted living and skilled
36 nursing home licensing reports including, but not limited to, the
37 most recent inspection reports and findings of complaint
38 investigations covering a period of no less than two years, prior
39 to signing a continuing care contract.

1 (c) All residents in residential living units shall have all of the
2 following rights:

3 (1) To live in an attractive, safe, and well maintained physical
4 environment.

5 (2) To live in an environment that enhances personal dignity,
6 maintains independence, and encourages self-determination.

7 (3) To participate in activities that meet individual physical,
8 intellectual, social, and spiritual needs.

9 (4) To expect effective channels of communication between
10 residents and staff, and between residents and the administration
11 or provider's governing body.

12 (5) To receive a clear and complete written contract that
13 establishes the mutual rights and obligations of the resident and
14 the continuing care retirement community.

15 (6) To manage his or her financial affairs.

16 (7) To be assured that all donations, contributions, gifts, or
17 purchases of provider-sponsored financial products shall be
18 voluntary, and may not be a condition of acceptance or of ongoing
19 eligibility for services.

20 (8) To maintain and establish ties to the local community.

21 (9) To organize and participate freely in the operation of
22 independent resident organizations and associations.

23 (d) A continuing care retirement community shall maintain an
24 environment that enhances the residents' self-determination and
25 independence. The provider shall do both of the following:

26 (1) Encourage the formation of a resident association by
27 interested residents who may elect a governing body. The provider
28 shall provide space and post notices for meetings, and provide
29 assistance in attending meetings for those residents who request
30 it. In order to promote a free exchange of ideas, at least part of
31 each meeting shall be conducted without the presence of any
32 continuing care retirement community personnel. The association
33 may, among other things, make recommendations to management
34 regarding resident issues that impact the residents' quality of life,
35 quality of care, exercise of rights, safety and quality of the physical
36 environment, concerns about the contract, fiscal matters, or other
37 issues of concern to residents. The management shall respond, in
38 writing, to a written request or concern of the resident association
39 within 20 working days of receiving the written request or concern.
40 Meetings shall be open to all residents to attend as well as to

1 present issues. Executive sessions of the governing body shall be
2 attended only by the governing body.

3 (2) Establish policies and procedures that promote the sharing
4 of information, dialogue between residents and management, and
5 access to the provider's governing body. The provider shall
6 biennially conduct a resident satisfaction survey that shall be made
7 available to the resident association or its governing body, or, if
8 neither exists, to a committee of residents at least 14 days prior to
9 the next semiannual meeting of residents and the governing board
10 of the provider required by subdivision (c) of Section 1771.8. A
11 copy of the survey shall be posted in a conspicuous location at
12 each facility.

13 (e) In addition to any statutory or regulatory bill of rights
14 required to be provided to residents of residential care facilities
15 for the elderly or skilled nursing facilities, the provider shall
16 provide a copy of the bill of rights prescribed by this section to
17 each resident at the time or before the resident signs a continuing
18 care contract, and at any time when the resident is proposed to be
19 moved to a different level of care.

20 (f) Each continuing care retirement community shall prominently
21 post in areas accessible to the residents and visitors a notice that
22 a copy of rights applicable to residents pursuant to this section and
23 any governing regulation issued by the Continuing Care Contracts
24 Branch of the department is available upon request from the
25 provider. The notice shall also state that the residents have a right
26 to file a complaint with the Continuing Care Contracts Branch for
27 any violation of those rights and shall contain information
28 explaining how a complaint may be filed, including the telephone
29 number and address of the Continuing Care Contracts Branch.

30 (g) The resident has the right to freely exercise all rights
31 pursuant to this section, in addition to political rights, without
32 retaliation by the provider.

33 (h) The department may, upon receiving a complaint of a
34 violation of this section, request a copy of the policies and
35 procedures along with documentation on the conduct and findings
36 of any self-evaluations and consult with the Continuing Care
37 Advisory Committee for determination of compliance.

38 (i) Failure to comply with this section shall be grounds for the
39 imposition of conditions on, suspension of, or revocation of the

1 provisional certificate of authority or certificate of authority
2 pursuant to Section 1793.21.

3 (j) Failure to comply with this section constitutes a violation of
4 residents' rights. Pursuant to Section 1569.49, the department shall
5 impose and collect a civil penalty of not more than one hundred
6 fifty dollars (\$150) per violation upon a continuing care retirement
7 community that violates a right guaranteed by this section.

8 SEC. 6. Section 1776.3 of the Health and Safety Code is
9 amended to read:

10 1776.3. (a) The Continuing Care Contracts Branch of the
11 department shall enter and review each continuing care retirement
12 community in the state at least once every three years to augment
13 the branch's assessment of the provider's financial soundness.

14 (b) During its facility visits, the branch shall consider the
15 condition of the facility, whether the facility is operating in
16 compliance with applicable state law, and whether the provider is
17 performing the services it has specified in its continuing care
18 contracts.

19 (c) The branch shall issue guidelines that require each provider
20 to adopt a comprehensive disaster preparedness plan, update that
21 plan at least every three years, submit a copy to the department,
22 and make copies available to residents in a prominent location in
23 each continuing care retirement community facility.

24 (d) (1) The branch shall respond within 15 business days to
25 residents' rights, service-related, and financially related complaints
26 by residents, and shall furnish to residents upon request and within
27 15 business days any document or report filed with the department
28 by a continuing care provider, except documents protected by
29 privacy laws.

30 (2) The branch shall provide the Continuing Care Advisory
31 Committee with a summary of all residents' rights, service-related,
32 and financially related complaints by residents. The provider shall
33 disclose any citation issued by the department pursuant to Section
34 1793.6 in its disclosure statement to residents as updated annually,
35 and shall post a notice of the citation in a conspicuous location in
36 the facility. The notice shall include a statement indicating that
37 residents may obtain additional information regarding the citation
38 from the provider and the department.

39 (e) The branch shall annually review, summarize, and report to
40 the commissioner on the work of the Continuing Care Advisory

1 Committee, including any issues arising from its review of the
2 condition of any continuing care retirement community or any
3 continuing care retirement community provider, and including any
4 recommendations for actions by the committee, the department,
5 or the Legislature to improve oversight of continuing care
6 retirement community.

7 SEC. 7. Section 1777.2 of the Health and Safety Code is
8 amended to read:

9 1777.2. (a) The Continuing Care Advisory Committee shall:

10 (1) Review the financial and managerial condition of continuing
11 care retirement communities operating under a certificate of
12 authority.

13 (2) Review the financial condition of any continuing care
14 retirement community that the committee determines is indicating
15 signs of financial difficulty and may be in need of close
16 supervision.

17 (3) Monitor the condition of those continuing care retirement
18 communities that the department or the chair of the committee
19 may request.

20 (4) Make available consumer information on the selection of
21 continuing care contracts and necessary contract protections in the
22 purchase of continuing care contracts.

23 (5) Review new applications regarding financial, actuarial, and
24 marketing feasibility as requested by the department.

25 (b) The committee shall make recommendations to the
26 department regarding needed changes in its rules and regulations
27 and upon request provide advice regarding the feasibility of new
28 continuing care retirement communities and the correction of
29 problems relating to the management or operation of any
30 continuing care retirement community. The committee shall also
31 perform any other advisory functions necessary to improve the
32 management and operation of continuing care retirement
33 communities.

34 (c) The committee may report on its recommendations directly
35 to the commissioner.

36 (d) The committee may hold meetings, as deemed necessary
37 to the performance of its duties.

38 SEC. 8. Section 1778 of the Health and Safety Code is repealed.

39 SEC. 9. Section 1778 is added to the Health and Safety Code,
40 to read:

1778. There is hereby created in the State Treasury a fund that shall be known as the Continuing Care Provider Fee Fund. The fund shall consist of two accounts, the Insurance Account and the State Department of Social Services Account. Ninety-five percent of fees received pursuant to this chapter shall be deposited into the Insurance Account and 5 percent shall be deposited into the State Department of Social Services Account. Notwithstanding Section 13340 of the Government Code, the moneys in the Insurance Account are continuously appropriated to the Department of Insurance and moneys in the State Department of Social Services Account are continuously appropriated to the State Department of Social Services for the purposes of this chapter.

SEC. 10. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) A continuing care contract shall contain all of the following:

- (1) The legal name and address of each provider.
- (2) The name and address of the continuing care retirement community.
- (3) The resident's name and the identity of the unit the resident will occupy.
- (4) If there is a transferor other than the resident, the transferor shall be a party to the contract and the transferor's name and address shall be specified.
- (5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider or the obligations specified in the continuing care contract, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the resident that the organization is not financially responsible.
- (6) The date the continuing care contract is signed by the resident and, where applicable, any other transferor.
- (7) The duration of the continuing care contract.
- (8) A list of the services that will be made available to the resident as required to provide the appropriate level of care. The list of services shall include the services required as a condition for licensure as a residential care facility for the elderly, including all of the following:

1 (A) Regular observation of the resident's health status to ensure
2 that his or her dietary needs, social needs, and needs for special
3 services are satisfied.

4 (B) Safe and healthful living accommodations, including
5 housekeeping services and utilities.

6 (C) Maintenance of house rules for the protection of residents.

7 (D) A planned activities program, which includes social and
8 recreational activities appropriate to the interests and capabilities
9 of the resident.

10 (E) Three balanced, nutritious meals and snacks made available
11 daily, including special diets prescribed by a physician as a medical
12 necessity.

13 (F) Assisted living services.

14 (G) Assistance with taking medications.

15 (H) Central storing and distribution of medications.

16 (I) Arrangements to meet health needs, including arranging
17 transportation.

18 (9) An itemization of the services that are included in the
19 monthly fee and the services that are available at an extra charge.
20 The provider shall attach a current fee schedule to the continuing
21 care contract.

22 (10) The procedures and conditions under which a resident may
23 be voluntarily and involuntarily transferred from a designated
24 living unit. The transfer procedures, at a minimum, shall include
25 provisions addressing all of the following circumstances under
26 which a transfer may be authorized:

27 (A) A continuing care retirement community may transfer a
28 resident under the following conditions, taking into account the
29 appropriateness and necessity of the transfer and the goal of
30 promoting resident independence:

31 (i) The resident is nonambulatory. The definition of
32 "nonambulatory," as provided in Section 13131, shall either be
33 stated in full in the continuing care contract or be cited. If Section
34 13131 is cited, a copy of the statute shall be made available to the
35 resident, either as an attachment to the continuing care contract or
36 by specifying that it will be provided upon request. If a
37 nonambulatory resident occupies a room that has a fire clearance
38 for nonambulatory residence, transfer shall not be necessary.

1 (ii) The resident develops a physical or mental condition that
2 endangers the health, safety, or well-being of the resident or another
3 person.

4 (iii) The resident's condition or needs require the resident's
5 transfer to an assisted living care unit or skilled nursing facility,
6 because the level of care required by the resident exceeds that
7 which may be lawfully provided in the living unit.

8 (iv) The resident's condition or needs require the resident's
9 transfer to a nursing facility, hospital, or other facility, and the
10 provider has no facilities available to provide that level of care.

11 (B) Before the continuing care retirement community transfers
12 a resident under any of the conditions set forth in subparagraph
13 (A), the community shall satisfy all of the following requirements:

14 (i) Involve the resident and the resident's responsible person,
15 as defined in paragraph (6) of subdivision (r) of Section 87101 of
16 Title 22 of the California Code of Regulations, and upon the
17 resident's or responsible person's request, family members, or the
18 resident's physician or other appropriate health professional, in
19 the assessment process that forms the basis for the level of care
20 transfer decision by the provider. The provider shall offer an
21 explanation of the assessment process. If an assessment tool or
22 tools, including scoring and evaluating criteria, are used in the
23 determination of the appropriateness of the transfer, the provider
24 shall make copies of the completed assessment available upon the
25 request of the resident or the resident's responsible person.

26 (ii) Prior to sending a formal notification of transfer, the provider
27 shall conduct a care conference with the resident and the resident's
28 responsible person, and upon the resident's or responsible person's
29 request, family members, and the resident's health care
30 professionals, to explain the reasons for transfer.

31 (iii) Notify the resident and the resident's responsible person
32 the reasons for the transfer in writing.

33 (iv) Notwithstanding any other provision of this subparagraph,
34 if the resident does not have impairment of cognitive abilities, the
35 resident may request that his or her responsible person not be
36 involved in the transfer process.

37 (v) The notice of transfer shall be made at least 30 days before
38 the transfer is expected to occur, except when the health or safety
39 of the resident or other residents is in danger, or the transfer is
40 required by the resident's urgent medical needs. Under those

1 circumstances, the written notice shall be made as soon as
2 practicable before the transfer.

3 (vi) The written notice shall contain the reasons for the transfer,
4 the effective date, the designated level of care or location to which
5 the resident will be transferred, a statement of the resident's right
6 to a review of the transfer decision at a care conference, as provided
7 for in subparagraph (C), and for disputed transfer decisions, the
8 right to review by the Continuing Care Contracts Branch of the
9 department, as provided for in subparagraph (D). The notice shall
10 also contain the name, address, and telephone number of the
11 department's Continuing Care Contracts Branch.

12 (vii) The continuing care retirement community shall provide
13 sufficient preparation and orientation to the resident to ensure a
14 safe and orderly transfer and to minimize trauma.

15 (C) The resident has the right to review the transfer decision at
16 a subsequent care conference that shall include the resident, the
17 resident's responsible person, and upon the resident's or
18 responsible person's request, family members, the resident's
19 physician or other appropriate health care professional, and
20 members of the provider's interdisciplinary team. The local
21 ombudsperson may also be included in the care conference, upon
22 the request of the resident, the resident's responsible person, or
23 the provider.

24 (D) For disputed transfer decisions, the resident or the resident's
25 responsible person has the right to a prompt and timely review of
26 the transfer process by the Continuing Care Contracts Branch of
27 the department.

28 (E) The decision of the department's Continuing Care Contracts
29 Branch shall be in writing and shall determine whether the provider
30 failed to comply with the transfer process pursuant to
31 subparagraphs (A) to (C), inclusive. Pending the decision of the
32 Continuing Care Contracts Branch, the provider shall specify any
33 additional care the provider believes is necessary in order for the
34 resident to remain in his or her unit. The resident may be required
35 to pay for the extra care, as provided in the contract.

36 (F) Transfer of a second resident when a shared accommodation
37 arrangement is terminated.

38 (11) Provisions describing any changes in the resident's monthly
39 fee and any changes in the entrance fee refund payable to the
40 resident that will occur if the resident transfers from any unit.

1 (12) The provider's continuing obligations, if any, in the event
2 a resident is transferred from the continuing care retirement
3 community to another facility.

4 (13) The provider's obligations, if any, to resume care upon the
5 resident's return after a transfer from the continuing care retirement
6 community.

7 (14) The provider's obligations to provide services to the
8 resident while the resident is absent from the continuing care
9 retirement community.

10 (15) The conditions under which the resident must permanently
11 release his or her living unit.

12 (16) If real or personal properties are transferred in lieu of cash,
13 a statement specifying each item's value at the time of transfer,
14 and how the value was ascertained.

15 (A) An itemized receipt which includes the information
16 described above is acceptable if incorporated as a part of the
17 continuing care contract.

18 (B) When real property is or will be transferred, the continuing
19 care contract shall include a statement that the deed or other
20 instrument of conveyance shall specify that the real property is
21 conveyed pursuant to a continuing care contract and may be subject
22 to rescission by the transferor within 90 days from the date that
23 the resident first occupies the residential unit.

24 (C) The failure to comply with paragraph (16) shall not affect
25 the validity of title to real property transferred pursuant to this
26 chapter.

27 (17) The amount of the entrance fee.

28 (18) In the event two parties have jointly paid the entrance fee
29 or other payment which allows them to occupy the unit, the
30 continuing care contract shall describe how any refund of entrance
31 fees is allocated.

32 (19) The amount of any processing fee.

33 (20) The amount of any monthly care fee.

34 (21) For continuing care contracts that require a monthly care
35 fee or other periodic payment, the continuing care contract shall
36 include the following:

37 (A) A statement that the occupancy and use of the
38 accommodations by the resident is contingent upon the regular
39 payment of the fee.

1 (B) The regular rate of payment agreed upon (per day, week,
2 or month).

3 (C) A provision specifying whether payment will be made in
4 advance or after services have been provided.

5 (D) A provision specifying the provider will adjust monthly
6 care fees for the resident's support, maintenance, board, or lodging,
7 when a resident requires medical attention while away from the
8 continuing care retirement community.

9 (E) A provision specifying whether a credit or allowance will
10 be given to a resident who is absent from the continuing care
11 retirement community or from meals. This provision shall also
12 state, when applicable, that the credit may be permitted at the
13 discretion or by special permission of the provider.

14 (F) A statement of billing practices, procedures, and timelines.
15 A provider shall allow a minimum of 14 days between the date a
16 bill is sent and the date payment is due. A charge for a late payment
17 may only be assessed if the amount and any condition for the
18 penalty is stated on the bill.

19 (22) All continuing care contracts that include monthly care
20 fees shall address changes in monthly care fees by including either
21 of the following provisions:

22 (A) For prepaid continuing care contracts, which include
23 monthly care fees, one of the following methods:

24 (i) Fees shall not be subject to change during the lifetime of the
25 agreement.

26 (ii) Fees shall not be increased by more than a specified number
27 of dollars in any one year and not more than a specified number
28 of dollars during the lifetime of the agreement.

29 (iii) Fees shall not be increased in excess of a specified
30 percentage over the preceding year and not more than a specified
31 percentage during the lifetime of the agreement.

32 (B) For monthly fee continuing care contracts, except prepaid
33 contracts, changes in monthly care fees shall be based on projected
34 costs, prior year per capita costs, and economic indicators.

35 (23) A provision requiring that the provider give written notice
36 to the resident at least 30 days in advance of any change in the
37 resident's monthly care fees or in the price or scope of any
38 component of care or other services.

39 (24) A provision indicating whether the resident's rights under
40 the continuing care contract include any proprietary interests in

1 the assets of the provider or in the continuing care retirement
2 community, or both. Any statement in a contract concerning an
3 ownership interest shall appear in a large-sized font or print.

4 (25) If the continuing care retirement community property is
5 encumbered by a security interest that is senior to any claims the
6 residents may have to enforce continuing care contracts, a provision
7 shall advise the residents that any claims they may have under the
8 continuing care contract are subordinate to the rights of the secured
9 lender. For equity projects, the continuing care contract shall
10 specify the type and extent of the equity interest and whether any
11 entity holds a security interest.

12 (26) Notice that the living units are part of a continuing care
13 retirement community that is licensed as a residential care facility
14 for the elderly and, as a result, any duly authorized agent of the
15 department may, upon proper identification and upon stating the
16 purpose of his or her visit, enter and inspect the entire premises at
17 any time, without advance notice.

18 (27) A conspicuous statement, in at least 10-point boldface type
19 in immediate proximity to the space reserved for the signatures of
20 the resident and, if applicable, the transferor, that provides as
21 follows: “You, the resident or transferor, may cancel the transaction
22 without cause at any time within 90 days from the date you first
23 occupy your living unit. See the attached notice of cancellation
24 form for an explanation of this right.”

25 (28) Notice that during the cancellation period, the continuing
26 care contract may be canceled upon 30 days’ written notice by the
27 provider without cause, or that the provider waives this right.

28 (29) The terms and conditions under which the continuing care
29 contract may be terminated after the cancellation period by either
30 party, including any health or financial conditions.

31 (30) A statement that, after the cancellation period, a provider
32 may unilaterally terminate the continuing care contract only if the
33 provider has good and sufficient cause.

34 (A) Any continuing care contract containing a clause that
35 provides for a continuing care contract to be terminated for “just
36 cause,” “good cause,” or other similar provision, shall also include
37 a provision that none of the following activities by the resident,
38 or on behalf of the resident, constitutes “just cause,” “good cause,”
39 or otherwise activates the termination provision:

1 (i) Filing or lodging a formal complaint with the department or
2 other appropriate authority.

3 (ii) Participation in an organization or affiliation of residents,
4 or other similar lawful activity.

5 (B) The provision required by this paragraph shall also state
6 that the provider shall not discriminate or retaliate in any manner
7 against any resident of a continuing care retirement community
8 for contacting the department, or any other state, county, or city
9 agency, or any elected or appointed government official to file a
10 complaint or for any other reason, or for participation in a residents'
11 organization or association.

12 (C) Nothing in this paragraph diminishes the provider's ability
13 to terminate the continuing care contract for good and sufficient
14 cause.

15 (31) A statement that at least 90 days' written notice to the
16 resident is required for a unilateral termination of the continuing
17 care contract by the provider.

18 (32) A statement concerning the length of notice that a resident
19 is required to give the provider to voluntarily terminate the
20 continuing care contract after the cancellation period.

21 (33) The policy or terms for refunding any portion of the
22 entrance fee, in the event of cancellation, termination, or death.
23 Every continuing care contract that provides for a refund of all or
24 a part of the entrance fee shall also do all of the following:

25 (A) Specify the amount, if any, the resident has paid or will pay
26 for upgrades, special features, or modifications to the resident's
27 unit.

28 (B) State that if the continuing care contract is canceled or
29 terminated by the provider, the provider shall do both of the
30 following:

31 (i) Amortize the specified amount at the same rate as the
32 resident's entrance fee.

33 (ii) Refund the unamortized balance to the resident at the same
34 time the provider pays the resident's entrance fee refund.

35 (34) The following notice at the bottom of the signatory page:

36
37 "NOTICE"

(date)

38
39 This is a continuing care contract as defined by paragraph (8)
40 of subdivision (c), or subdivision (l) of Section 1771 of the

1 California Health and Safety Code. This continuing care contract
2 form has been approved by the Department of Insurance as required
3 by subdivision (b) of Section 1787 of the California Health and
4 Safety Code. The basis for this approval was a determination that
5 (provider name) has submitted a contract that complies with the
6 minimum statutory requirements applicable to continuing care
7 contracts. The department does not approve or disapprove any of
8 the financial or health care coverage provisions in this contract.
9 Approval by the department is NOT a guaranty of performance or
10 an endorsement of any continuing care contract provisions.
11 Prospective transferors and residents are strongly encouraged to
12 carefully consider the benefits and risks of this continuing care
13 contract and to seek financial and legal advice before signing.

14 (35) The provider may not attempt to absolve itself in the
15 continuing care contract from liability for its negligence by any
16 statement to that effect, and shall include the following statement
17 in the contract: "Nothing in this continuing care contract limits
18 either the provider's obligation to provide adequate care and
19 supervision for the resident or any liability on the part of the
20 provider which may result from the provider's failure to provide
21 this care and supervision."

22 (b) A life care contract shall also provide that:

23 (1) All levels of care, including acute care and physicians' and
24 surgeons' services will be provided to a resident.

25 (2) Care will be provided for the duration of the resident's life
26 unless the life care contract is canceled or terminated by the
27 provider during the cancellation period or after the cancellation
28 period for good cause.

29 (3) A comprehensive continuum of care will be provided to the
30 resident, including skilled nursing, in a facility under the ownership
31 and supervision of the provider on, or adjacent to, the continuing
32 care retirement community premises.

33 (4) Monthly care fees will not be changed based on the resident's
34 level of care or service.

35 (5) A resident who becomes financially unable to pay his or her
36 monthly care fees shall be subsidized provided the resident's
37 financial need does not arise from action by the resident to divest
38 the resident of his or her assets.

39 (c) Continuing care contracts may include provisions that do
40 any of the following:

1 (1) Subsidize a resident who becomes financially unable to pay
2 for his or her monthly care fees at some future date. If a continuing
3 care contract provides for subsidizing a resident, it may also
4 provide for any of the following:

5 (A) The resident shall apply for any public assistance or other
6 aid for which he or she is eligible and that the provider may apply
7 for assistance on behalf of the resident.

8 (B) The provider's decision shall be final and conclusive
9 regarding any adjustments to be made or any action to be taken
10 regarding any charitable consideration extended to any of its
11 residents.

12 (C) The provider is entitled to payment for the actual costs of
13 care out of any property acquired by the resident subsequent to
14 any adjustment extended to the resident under paragraph (1), or
15 from any other property of the resident which the resident failed
16 to disclose.

17 (D) The provider may pay the monthly premium of the resident's
18 health insurance coverage under Medicare to ensure that those
19 payments will be made.

20 (E) The provider may receive an assignment from the resident
21 of the right to apply for and to receive the benefits, for and on
22 behalf of the resident.

23 (F) The provider is not responsible for the costs of furnishing
24 the resident with any services, supplies, and medication, when
25 reimbursement is reasonably available from any governmental
26 agency, or any private insurance.

27 (G) Any refund due to the resident at the termination of the
28 continuing care contract may be offset by any prior subsidy to the
29 resident by the provider.

30 (2) Limit responsibility for costs associated with the treatment
31 or medication of an ailment or illness existing prior to the date of
32 admission. In these cases, the medical or surgical exceptions, as
33 disclosed by the medical entrance examination, shall be listed in
34 the continuing care contract or in a medical report attached to and
35 made a part of the continuing care contract.

36 (3) Identify legal remedies which may be available to the
37 provider if the resident makes any material misrepresentation or
38 omission pertaining to the resident's assets or health.

1 (4) Restrict transfer or assignments of the resident's rights and
2 privileges under a continuing care contract due to the personal
3 nature of the continuing care contract.

4 (5) Protect the provider's ability to waive a resident's breach
5 of the terms or provisions of the continuing care contract in specific
6 instances without relinquishing its right to insist upon full
7 compliance by the resident with all terms or provisions in the
8 contract.

9 (6) Provide that the resident shall reimburse the provider for
10 any uninsured loss or damage to the resident's unit, beyond normal
11 wear and tear, resulting from the resident's carelessness or
12 negligence.

13 (7) Provide that the resident agrees to observe the off-limit areas
14 of the continuing care retirement community designated by the
15 provider for safety reasons. The provider may not include any
16 provision in a continuing care contract that absolves the provider
17 from liability for its negligence.

18 (8) Provide for the subrogation to the provider of the resident's
19 rights in the case of injury to a resident caused by the acts or
20 omissions of a third party, or for the assignment of the resident's
21 recovery or benefits in this case to the provider, to the extent of
22 the value of the goods and services furnished by the provider to
23 or on behalf of the resident as a result of the injury.

24 (9) Provide for a lien on any judgment, settlement, or recovery
25 for any additional expense incurred by the provider in caring for
26 the resident as a result of injury.

27 (10) Require the resident's cooperation and assistance in the
28 diligent prosecution of any claim or action against any third party.

29 (11) Provide for the appointment of a conservator or guardian
30 by a court with jurisdiction in the event a resident becomes unable
31 to handle his or her personal or financial affairs.

32 (12) Allow a provider, whose property is tax exempt, to charge
33 the resident on a pro rata basis property taxes, or in-lieu taxes, that
34 the provider is required to pay.

35 (13) Make any other provision approved by the department.

36 (d) A copy of the resident's rights as described in Section 1771.7
37 shall be attached to every continuing care contract.

38 (e) A copy of the current audited financial statement of the
39 provider shall be attached to every continuing care contract. For
40 a provider whose current audited financial statement does not

1 accurately reflect the financial ability of the provider to fulfill the
2 continuing care contract obligations, the financial statement
3 attached to the continuing care contract shall include all of the
4 following:

5 (1) A disclosure that the reserve requirement has not yet been
6 determined or met, and that entrance fees will not be held in
7 escrow.

8 (2) A disclosure that the ability to provide the services promised
9 in the continuing care contract will depend on successful
10 compliance with the approved financial plan.

11 (3) A copy of the approved financial plan for meeting the reserve
12 requirements.

13 (4) Any other supplemental statements or attachments necessary
14 to accurately represent the provider's financial ability to fulfill its
15 continuing care contract obligations.

16 (f) A schedule of the average monthly care fees charged to
17 residents for each type of residential living unit for each of the five
18 years preceding execution of the continuing care contract shall be
19 attached to every continuing care contract. The provider shall
20 update this schedule annually at the end of each fiscal year. If the
21 continuing care retirement community has not been in existence
22 for five years, the information shall be provided for each of the
23 years the continuing care retirement community has been in
24 existence.

25 (g) If any continuing care contract provides for a health
26 insurance policy for the benefit of the resident, the provider shall
27 attach to the continuing care contract a binder complying with
28 Sections 382 and 382.5 of the Insurance Code.

29 (h) The provider shall attach to every continuing care contract
30 a completed form in duplicate, captioned "Notice of Cancellation."
31 The notice shall be easily detachable, and shall contain, in at least
32 10-point boldface type, the following statement:

33
34 "NOTICE OF CANCELLATION" (date)
35 Your first date of occupancy under this contract
36 is: _____
37

38 "You may cancel this transaction, without any penalty within
39 90 calendar days from the above date.

1 If you cancel, any property transferred, any payments made by
2 you under the contract, and any negotiable instrument executed
3 by you will be returned within 14 calendar days after making
4 possession of the living unit available to the provider. Any security
5 interest arising out of the transaction will be canceled.

6 If you cancel, you are obligated to pay a reasonable processing
7 fee to cover costs and to pay for the reasonable value of the services
8 received by you from the provider up to the date you canceled or
9 made available to the provider the possession of any living unit
10 delivered to you under this contract, whichever is later.

11 If you cancel, you must return possession of any living unit
12 delivered to you under this contract to the provider in substantially
13 the same condition as when you took possession.

14 Possession of the living unit must be made available to the
15 provider within 20 calendar days of your notice of cancellation.
16 If you fail to make the possession of any living unit available to
17 the provider, then you remain liable for performance of all
18 obligations under the contract.

19 To cancel this transaction, mail or deliver a signed and dated
20 copy of this cancellation notice, or any other written notice, or
21 send a telegram

22
23 to _____
24 (Name of provider)

25 at _____
26 (Address of provider's place of business)

27 not later than midnight of _____ (date).

28 I hereby cancel this
29 transaction

30 _____
31 (Resident or
32 Transferor's signature)"